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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of the Local)
Competition Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-98

Interconnection Between Local)
Exchange Carriers and Commercial)
Mobile Radio Service Providers)

CC Docket No. 95-185

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COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
ON PETITIONS FOR RECONSIDERATION

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To: The Commission

COMMENTS ON PETITIONS FOR RECONSIDERATION

The Personal Communications Industry Association ("PCIA")^{1/} respectfully submits comments in support of the various petitions for reconsideration and/or clarification of the Second Report and Order and Memorandum Opinion and

^{1/} PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

Order (the "Second Report")^{2/} filed by AirTouch Paging and PowerPage, Inc. (AirTouch/PowerPage")^{3/}, AT&T Corp. ("AT&T")^{4/}, Paging Network, Inc. ("PageNet")^{5/} and SBC Communications Inc. ("SBC")^{6/} in the above-captioned proceeding.

I. THE RECORD ON RECONSIDERATION SUPPORTS A PROHIBITION ON WIRELESS NUMBER TAKEBACKS

Several petitioners urge the Commission to rule on reconsideration that state commissions are prohibited from ordering "wireless takebacks" when implementing splits of NPAs.^{7/} For example, AT&T asks the Commission to provide a

^{2/} FCC 96-333, released August 8, 1996.

^{3/} See Petition for Partial Reconsideration And/Or Clarification of Second Report and Order and Memorandum Opinion and Order filed October 7, 1996 by AirTouch/PowerPage (the "AirTouch/PowerPage Petition").

^{4/} See Petition for Limited Reconsideration and Clarification filed October 7, 1996 by AT&T (the "AT&T Petition").

^{5/} See Petition for Limited Reconsideration filed October 7, 1996 by PageNet (the "PageNet Petition").

^{6/} See Petition for Reconsideration of SBC Communications Inc. filed October 7, 1996 (the "SBC Petition").

^{7/} In the Second Report and Order, the Commission stated that "it would not take action here to
(continued...)

definitive statement in opposition to wireless takebacks in recognition of the disparate burden suffered by wireless carriers as compared to wireline carriers.^{8/}

AirTouch/PowerPage also argue that the takeback of wireless numbers violates the Commission's goal to have "technology-blind" area code relief that "does not burden or favor a particular technology"^{9/}. PageNet further argues that Type 2 wireless numbers served out of tandem switches -- unlike wireline numbers served out of wire centers -- are not tied to any fixed location, which makes the recapture of these numbers unjustified.^{10/}

^{1/} (...continued)

prevent the Texas [Public Utilities] Commission from taking back some wireless numbers in the course of introducing a geographic split plan". Second Report, para. 308

^{8/} AT&T Petition, paras. 12-33.

^{9/} AirTouch Petition, para. 19, quoting the Second Report, para. 308.

^{10/} PageNet Petition, para. 7. As AirTouch pointed out in its Petition, wireless carriers generally have both Type 1 (end-office) and Type 2 (tandem) telephone numbers. Type 1 numbers are not at issue here because they are assigned to a discrete geographic location. In a geographic split, when the end-office is now in a different NPA, the underlying Type 1 numbers would also be in the new NPA. Type 2 numbers, however, are not assigned to a
(continued...)

The SBC Petition aptly describes the Commission's endorsement of the Texas PUC number takeback plan as being based upon "an illusion of equitable treatment".^{11/} SBC identifies in detail the unique burdens placed upon the wireless customer and the wireless carrier associated with the change of a telephone number.^{12/} This description undermines any conclusion that a plan which calls for the recovery of an equivalent number of wireless and wireline numbers is competitively neutral.

PCIA agrees with the Petitions. There are substantial difficulties presented by the takeback of wireless numbers. Based upon the record on reconsideration, the Commission should rule that states cannot force wireless carriers to change NPAs in connection with the opening of a new NPA for Type 2 numbers assigned to them.

II. MESSAGING PROVIDERS SHOULD BE CLASSIFIED AS PROVIDERS OF "TELEPHONE EXCHANGE SERVICE"

^{10/} (...continued)

particular location and are very attractive to wireless carriers because they allow such carriers to serve the entire market in the same fashion they provide service to the public.

^{11/} SBC Petition, p. 25.

^{12/} Id., p. 26.

In the Second Report, the Commission failed to explicitly include messaging providers within the definition of "telephone exchange service providers," while including cellular, broadband PCS, and covered SMR providers within this definition.^{13/} PageNet and AirTouch both petition the Commission to reconsider its decision to exclude messaging providers from this definition because such decision is inconsistent with the Telecommunications Act of 1996 (the "1996 Act"), FCC precedent and judicial precedent, and should therefore be reconsidered.^{14/}

Specifically, the 1996 Act defines "telephone exchange service" as service within a telephone exchange" or "comparable service provided through a system of switches, transmission equipment, or other facilities . . . by which a subscriber can originate and terminate telecommunications

^{13/} Second Report, paras. 29, 101.

^{14/} See PageNet Petition at pp. 7-11; AirTouch Petition at paras. 8-17. Consistent with the position taken by PageNet and AirTouch, PCIA is not advocating that paging providers be classified as "local exchange carriers." PCIA fully supports the Commission's decision not to classify CMRS providers -- including messaging providers -- as LECs. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, para. 1004.

service."^{15/} Messaging service plainly falls within this definition, as it provides intra-exchange service using the requisite switches and transmission equipment.^{16/} Further, messaging service is in fact intercommunicating communications. The paged party receives a page and the paging party receives audio confirmation that the page has been sent and queued for receipt. This functionality is no different than many one-way calls being placed over landline networks and classified as telephone exchange services. For example, when a caller places a call to a residence and receives a telephone answering machine, that call is virtually identical to the same call placed to a paging subscriber. Finally, such a definition would be consistent with the prior Commission decision in its radio common

^{15/} 47 U.S.C. § 153(47). The analyses of AirTouch and PageNet which demonstrate the manner in which messaging services appear to satisfy the statutory definition.

^{16/} As AirTouch points out, the Commission has on numerous previous occasions found that paging carriers provide telephone exchange service even under the more restrictive definition of such service contained in the Communications Act of 1934 prior to the amendments made by the 1996 Act.

carrier Public Notice^{17/}, and the United States District Court for the District of Columbia's holding in United States v. Western Electric Co.^{18/}

III. SEVERAL PRO-COMPETITIVE PROPOSALS IN THE PETITIONS DESERVE ATTENTION

PCIA consistently supports rules and policies that promote the efforts of wireless carriers to compete on a level playing field with other telecommunications carriers. Several petitions contain proposals that, if adopted, would foster beneficial competition, and deserve the Commission's serious attention.

The Second Report and Order requires that any code opening fees charged by an incumbent LEC (an "ILEC") not be "unjust, discriminating or unreasonable".^{19/} At a minimum, an ILEC must establish "one uniform fee [for assignment of

^{17/} 1 FCC 2d 830 (1965) (finding that radio common carrier paging and mobile telephone service is "exchange service within the meaning of Section 221(b)"). See also, Tariffs For Mobile Services, 53 FCC 2d 579 (1975) (same).

^{18/} 578 F. Supp. 643, 645 (D.D.C. 1983) (holding that one-way paging services are "exchange telecommunications services" within the meaning of the Consent Decree). As AirTouch points out, this decision to include paging as an exchange service was very important because it determined which assets of AT&T would be divested to the RBOCs.

^{19/} Second Report, para. 333.

central office codes] for all carriers, including itself and its affiliates".^{20/} Despite these important ground rules, paging carriers are continuing to encounter wide variances in the code opening and maintenance charges that ILECs seek to impose.

AT&T's Petition seeks to address this situation by requesting clarification that any fees charged by an ILEC for NXX code opening must be limited to forward-looking, economically efficient costs (if any) of number administration.^{21/} The result would be a "bright-line" rule in which only cost elements comparable to those that would be incurred by a neutral third party numbering administrator would be recoverable.

AirTouch/PowerPage request the Commission to find that all telecommunications carriers, not just those providing competing services, should enjoy the benefits of prior notification by ILEC's of network changes.^{22/} Since ILEC's are already obligated to provide such notification to

^{20/} Id. at para. 332.

^{21/} AT&T Petition, pp. 10-12.

^{22/} AirTouch/PowerPage Petition, paras 5-7.

"competing providers"^{23/}, extending the notification to all interconnected carriers would impose little additional burden to the ILECs, but all telecommunications carriers would reap great potential benefits by encouraging the timely development of enhanced services and guarding against service disruptions.

IV. PROMPT RESOLUTION OF THE RECONSIDERATION REQUESTS WILL SERVE THE PUBLIC INTEREST

The Commission consistently has met Congressionally mandated deadlines for implementing the diverse initiatives arising out of the 1996 Act. The result has been unprecedented activity in the telecommunications marketplace as carriers seek to initiate, expand and upgrade the services they are offering.

The issues on reconsideration in this proceeding are critical to the development of competitive markets. Telephone numbers are an essential resource to telecommunications carriers, and the terms and conditions under which they are made available are fundamental to achievement of the pro-competitive objectives of the 1996 Act. In some cases, the open issues in this proceeding will

^{23/} Second Report, para. 171.

cause delay in the resolution of interconnection discussions between ILECs and wireless companies, and a resulting delay in the initiation of competing services.

In view of the importance of these issues, PCIA urges the Commission to resolve the petitions in this proceeding as soon as practicable.

CONCLUSION

For the foregoing reasons, PCIA respectfully supports the petitions for reconsideration of AirTouch/Powerpage, AT&T, PageNet and SBC to the extent set forth herein.

Respectfully submitted,

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November 20, 1996

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